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8 Proposed Attorney for the Debtor

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10 **UNITED STATES BANKRUPTCY COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 In re: ) Case No. 15-31259  
14 )  
15 **Sinbad's Pier II, Inc.,** ) Chapter 11  
16 )  
17 Debtor. ) Judge: Hon. Hannah L. Blumenstiel  
18 ) Date: [Subject to Order Setting  
19 ) Hearing]  
20 ) Time:  
21 ) Courtroom: 235 Pine Street, 23rd Floor  
22 ) San Francisco, CA 94104

23 **DECLARATION OF DUANE STINSON IN SUPPORT OF FIRST DAY MOTIONS**

24 I, Duane Stinson, do hereby declare:

25 I am the proposed responsible individual for Sinbad's Pier II, Inc., the debtor and debtor-  
26 in-possession in the above Chapter 11 case (the "Debtor" or "Sinbad's"). I am also the vice-  
27 president of the Debtor and assist in most of the day-to-day operations of the business. As a  
28 result, I have personal knowledge of the matters stated herein except as to those matters stated on  
information and belief, and as to those matters, I am informed and believe them to be true. If  
called as a witness, I could and would competently testify as to those facts.

This Declaration is made in support of the MOTION FOR INTERIM AND FINAL ORDERS (I)  
AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND (II) SCHEDULING A

1 FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b) and the MOTION FOR ORDER  
2 AUTHORIZING DEBTOR TO (I) CONTINUE CERTAIN CONSUMER PRACTICES AND (II) MAINTAIN ITS  
3 CREDIT CARD PAYMENT SYSTEM filed concurrently herewith.

4 **A. Litigation Background.**

5 1. The Debtor is a seafood restaurant that does business under the name of Sinbad's.  
6 Sinbad's has been operating at Pier 2 for over 40 years.

7 2. Sinbad's had a 20 year lease that ended in 2000. Since then, Sinbad's and the  
8 Port Authority, which is a subdivision of the City and County of San Francisco (the "Port  
9 Authority") have been unable to reach a new long term lease.

10 3. In March 2015, the Debtor filed a lawsuit against the Port Authority, alleging the  
11 Port Authority acted in bad faith in refusing to allow the Debtor to continue operations until such  
12 time as Pier 2 would be demolished, case CGC-15-544849 ("Bad Faith Case"). The Debtor  
13 sought declaratory relief<sup>1</sup> to prevent eviction until such time as the location would be needed  
14 under the Bay Area Water Emergency Transportation Authority ("WETA") project. The WETA  
15 project was delayed from 2015 to 2016. In this case, the Port Authority filed a cross-complaint  
16 for indemnity and added alter-ego claims against the Debtor's two directors, Thomas and Duane  
17 Stinson.

18 4. In April 2015, the Port Authority began unlawful detainer proceedings against the  
19 Debtor, case CUD-15-652204 (the "UD Case").

20 5. The UD Case went to trial prior to the Bad Faith Case, where a judgment was  
21 entered against the Debtor for possession and damages. The Sheriff's Department was prepared  
22 to take possession of Pier 2 on October 14, 2015. Consequently, the Debtor filed for relief under  
23 this chapter on October 14, 2015 to preserve the status quo and avoid mootng the Bad Faith  
24 Case.

25 **B. Operations and Financing.**

26 6. Sinbad's is a full scale restaurant operating out of Pier 2 that employs around 35  
27 employees. As set forth in the Stinson Declaration, the Debtor estimates that it will be grossing  
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<sup>1</sup> The Debtor reserves its right to amend the complaint to add additional related causes of action and damages.

1 around \$145,000 for the next 30 day period. While portions of November will be slower due to  
2 Thanksgiving, business will pick up in December with the scheduling of various holiday events.  
3 Based on the Debtor's estimates, each subsequent 30 day period will generate at least \$170,000.  
4 If the case continues through February, the Debtor would also be able to pick up business from  
5 both Valentine's Day and the Super Bowl. As projected, the Debtor estimates it could generate a  
6 net profit before taxes of at least \$40,000. Furthermore, continuing operations would also allow  
7 the Debtor to continue employing employees through the holiday season.

8 7. Attached as **Exhibit "A"** to this Declaration is the 90 day proposed budget for the  
9 use of cash collateral. The proposed payments and explanations under the budget are as follows:

10 a. Rent – The Debtor intends to pay post-petition rent as the Port Authority  
11 would otherwise have an administrative rent claim. The daily rental charge is \$730.78. The  
12 Debtor proposes to make weekly payments in arrears on Fridays, starting October 23 (first  
13 payment would be \$6,577.02 for 10/14 through 10/22).

14 b. Trade Vendors – The Debtor requires constant deliveries of fresh foods,  
15 beverages, and other perishables in order to maintain its bar and restaurant. These items in turn  
16 are sold and generate revenue for the Debtor. Vendors would be paid for their post-petition  
17 deliveries. The Debtor estimates total costs (excluding US Foods) at \$21,000 on a monthly  
18 basis. Payment upon delivery is likely required as they are unlikely to deliver on estate credit.  
19 Because these items are quickly resold through the restaurant, continued payment of vendors as  
20 they deliver goods is essential to operations.

21 c. Service Vendors – In addition to food, the Debtor has several vendors that  
22 are essential to operations. Linen service and janitorial service are required to keep appearances  
23 sanitary and clean. The total costs are about \$3,500 a month. Separately, and perhaps most  
24 importantly, the Debtor needs its credit card processors. The Debtor's business is 90% credit  
25 cards. The processors take a percentage of sales and average about \$5,000 per month, which is  
26 typically drawn at the beginning of the month. Disruptions in credit card processing could be  
27 fatal to such a credit-dependent business.

1           d.       Utilities – Utility service includes water, garbage, electricity, and cable  
2 television. The Debtor, but for the filing, is generally current on utilities. All of them are  
3 necessary to operate the Debtor’s business. While it is unlikely the utilities will shut off the  
4 Debtor’s utility service (in part due to section 366), maintaining utility service and paying for  
5 post-petition service is essential to business operations.

6           e.       Personnel (Payroll) – The Debtor employs around 35 employees. The  
7 employees’ wages have been prepaid through October 15. After that, the Debtor needs to be able  
8 to make post-petition payments for employee wages. Other than a complete cessation of  
9 business, the Debtor does not anticipate a reduction in its workforce. Wages and related taxes  
10 are approximately \$32,000 per month. An additional \$3,000 is paid each month for medical  
11 insurance as part of union agreements. Separately, the Debtor has a bookkeeper (Faye Huang)  
12 whose role is to compile the daily receipts, invoices, and expenses. Given the amount of  
13 paperwork involved in the business, her services are vital to assist in tracking expenses. The  
14 bookkeeper receives two payments of \$850 a month. The Stinson brothers (Thomas, Duane, and  
15 Charles) manage the day-to-day operations and operate the front desk. Each work about five to  
16 six days a week and each work about 50 hours weekly. Compensation has been off-and-on,  
17 depending on the state of the business. Otherwise, they generally receive \$2,000 twice a month.  
18 For purposes of this reorganization, they are prepared to reduce their payments to \$1,000 for the  
19 first month to ensure profitability for the estate. Afterwards, they are seeking \$3,000 per month  
20 to cover the anticipated extra hours for the busier holiday season.

21           f.       Secured Payments (US Foods) – The Debtor seeks to pay roughly \$13,000  
22 per month to US Foods, which represents the amount of product that they deliver on a monthly  
23 basis. Payments would be roughly \$3,400 per week, as is customary with them. US Foods is  
24 fully secured creditor through both its PMSI on goods delivered and its security interest in all of  
25 the Debtor’s other assets. The Debtor believes neither US Foods nor creditors are prejudiced  
26 under this approach.

27           g.       Secured Payments (Sa-Ro) – The Debtor seeks to continue making its  
28 monthly scheduled payments of close to \$1,300 per month. Given that this was primarily an

1 equipment leasing agreement, the Debtor does not believe Sa-Ro is prejudiced through these  
2 monthly payments (as they are the contractual amounts) or a diminution of their collateral (i.e.,  
3 equipment and fixtures). At the end of the day, Sa-Ro still has personal guarantees and the  
4 equipment they delivered to secure the balance of any amounts owed.

5 8. h. Maintenance/Contingency – Built into the budget is a \$5,000 margin for  
6 error. The \$5,000 is expected to cover any unknown foreseen maintenance issues or possible  
7 deviations in the proposed budget.

8 **C. UCC Search Results.**

9 9. The Debtor did a UCC search for all liens against Sinbad's. Five current liens<sup>2</sup>  
10 under Sinbad's name turned up: the IRS, US Foods, Sa-Ro, Rhino Services, and Rewards  
11 Network.

12 10. The IRS filed a tax lien in September 2015 for 2014 related taxes. The total  
13 amount is \$71,522.18.

14 11. US Foods, Inc. is one of Sinbad's major food suppliers. A UCC was filed on June  
15 11, 2014, which includes a Purchase Money Security Interest in the goods they deliver as well as  
16 a general lien on the Debtor's other goods, inventory, equipment, fixtures, and their proceeds.  
17 The account is generally current under ordinary business practices. Sinbad's pays invoices about  
18 30 days after they are due and runs an average balance of \$14,000. Generally, a check for about  
19 \$3,400 is paid each week as products are delivered.

20 12. Sa-Ro Leasing, Inc. is an equipment financing company. In May 2014, Sa-Ro  
21 leased to the Debtor \$38,000 worth of equipment and improvements. A UCC was filed on June  
22 11, 2014, and the account is also personally guaranteed by both Thomas and Duane Stinson.  
23 Payment terms were \$1,280.37 per month for 36 months. The account is current.

24 13. Rhino Services had a UCC filing on September 4, 2012. The Debtor has no idea  
25 who they are. The Debtor's counsel called Rhino Services and left a message for more  
26

27 <sup>2</sup> The Debtor borrowed funds from Can Collect, and the agreement provides for both a UCC lien and a personal  
28 guarantee. The Debtor's counsel spoke with Can Collect, who provided a UCC lien number. The Debtor found a  
UCC lien for Minglewood Services, which the Debtor assumes to be affiliated with Can Collect. The UCC filing  
was filed in February 2005, renewed in 2010, but not in 2015. It's my understanding that under California law, the  
filing has lapsed, and they no longer have a perfected security interest.

1 information. From what counsel has learned, “Rhino Services” is an industrial and  
2 environmental cleaning contractor and are otherwise not involved with the Debtor. Under these  
3 circumstances, the Debtor is not providing for them under this cash collateral motion.

4 14. Rewards Network Establishment Services Inc. (“Rewards Network”) is a  
5 financing company. The Debtor’s counsel contacted Rewards Network and confirmed with their  
6 analyst that this account appears to be closed, and, barring some unusual circumstances upon  
7 review, a UCC-3 release is being processed. Therefore, no treatment is being proposed for them.

8 **D. Marketing and Credit Card Operations.**

9 15. Sinbad’s as part of its operations has occasionally participated in various  
10 marketing programs. In April 2015, Sinbad’s participated in a GroupOn program where  
11 participants could pay \$55.00 (“Face Value”) to receive \$110 in value (“Promotional Value”).  
12 Vouchers were to be used by June 2015. After that, the vouchers retained only its Face Value  
13 and not its Promotional Value. Approximately 150 vouchers remain unredeemed, for a face  
14 value of \$8,250.

15 16. As a retail establishment, Sinbad’s estimates that 90% of all transactions occur by  
16 credit card. Sinbad’s now has two credit card processors, American Express and Elavon.  
17 American Express processes its own cards while Elavon processes Visa, Mastercard, and  
18 Discover card transactions. Both processors remit funds on a daily basis and collect accrued fees  
19 at the beginning of the month through automatic EFTs.

20 17. As contemplation of this filing, Sinbad’s contacted the processors about whether  
21 they would accept cashier’s checks for amounts due. Both of them would not accept deviations  
22 from the normal business process. Accumulated fees through October 13 are estimated at less  
23 than \$1,000 for American Express and less than \$2,000 for Elavon. This is less than the amounts  
24 typically held and remitted on a daily basis.

25 Executed on October 15, 2015 in the City and County of San Francisco, State of  
26 California.

27  
28 /s/ Duane Stinson  
Duane Stinson